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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,398	08/15/2007	William Francis McCulloch	89334.0001	8250

7590 01/26/2010  
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EXAMINER
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LE, MARK T

ART UNIT	PAPER NUMBER
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3617

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,398	<b>Applicant(s)</b> MCCULLOCH, WILLIAM FRANCIS	
	<b>Examiner</b> MARK T. LE	<b>Art Unit</b> 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 33-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-81 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                         |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                             | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                                     | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/09;1/07;9/06</u> . | 6) <input type="checkbox"/> Other: ____.                                                |

### DETAILED ACTION

1. The abstract of the disclosure is objected to because legal phraseology, such as "said"/"means", should be avoided. Correction is required. See MPEP § 608.01(b).
2. In claim 52, the arresting means for arresting movement of the rail moving means is considered to invoke means plus function under 35 USC 112, sixth paragraph, while many other means recited throughout the instant claims are not considered to invoke means plus function under 35 USC 112, sixth paragraph, because the phrase "means for" is not used.
3. Claims 35, 59-60 and 78-79 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 35, line 2, "the support members" lacks antecedent basis.

In claims 59 and 78, line 3, the expression "a standard rail to rail spacing" is indefinite because it is not clear as to what dimensions are covered by the instant claimed standard.

Similarly, in claims 60 and 79, the expression "a standard spacing" is indefinite because it is not clear as to what dimensions are covered by the instant claimed standard.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 33-39, 41, 44, 48-53, 56, 58-61, 63-69, 71, 74, 77-80 (59-60 and 78-79 as best can be treated) are rejected under 35 U.S.C. 102(b) as being anticipated by Summer (US 4,538,722).

Summer discloses a railway rail handling apparatus having all of the features recited in the instant claims, including ground engaging wheel means formed by endless track devices 7, and rail moving means or rail raising means 9, 11 supported by horizontal beams 4 and vertical supports 5, wherein, the rail moving means or rail raising means is operative within the foot prints of the ground engaging wheel means.

Regarding the instant claimed railway rail handling apparatus being capable of steering, such as that recited in claim 37, and to move only one rail at a time, such that recited in claim 38, note that since the structure of Summer is capable of the operations as claimed, the instant claimed intended use limitations are considered met.

Regarding the instant claimed chassis means, such as that recited in instant claim 41, and the chassis means being supported by four spaced apart support member, such as that recited in claim 44, consider the chassis means of Summer that is formed by two horizontal support beams 4 and supported on four spaced apart support members 5, as shown in Figure 1 of Summer.

Regarding the instant claimed rail moving means being configured to be extendible, as recited in instant claim 48, note that the rail moving means of Summer is extendable by extending hydraulic rams 9.

Regarding the instant claimed rail moving 9 capable of being moved laterally, such as that is recited in instant claim 49, consider the structure of Summer, wherein, rail moving means is capable of moving laterally by trolleys 8.

Regarding the instant claimed rail moving means being capable of swivel in relation to the apparatus, such as that is recited in instant claim 50, note that the rail moving means of Summer are mounted with pin connections at the upper and lower ends of hydraulic rams 9; therefore, the rail moving means of Summer is readable as capable of swivel movements as claimed.

Regarding the rail moving means having an elongate body with a first end swivel on the apparatus and the second end configured to engage a rail, such as that recited in instant claim 51, consider the elongated body formed by elements 9,11 as shown in the rear of Fig. 1 of Summer, wherein, the swivel upper end of the body is mounted to the apparatus at trolley 8 and lower end is configured to engage a rail.

Regarding the instant claimed arresting means, recited in instant claim 52, note that the rail moving means of Summer are supported by trolleys 8, which are configured to be moved and arrested by user operable trolley cable 12 connected thereto by a connection pins (see Figure 1 of Summer); therefore, the structure of Summer is considered to include arresting means as broadly claimed.

Regarding the rail moving means permitting rotational movement of the supported rail about a substantially vertical axis, such as that is recited in instant claim 53, note that the rail moving means of Summer has hydraulic rams 9 that permits such rotational movement about a substantially vertical axis.

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Regarding the instant claimed roller for facilitating longitudinal movement, as recited in instant claim 56, consider for example rollers 87,95 shown in Figure 14 of Summer.

Regarding the instant claimed continuous chain tread means, as recited in instant claim 58, consider the chain tread means 7 of Summer.

Regarding the instant claimed chain tread means being spaced to substantially the same extend as a standard rail to rail spacing, as recited in instant claim 59, note that the spacing of the chain tread means 7 of Summer is readable as being substantially corresponding to a large track system for a large traveling bridge crane.

Regarding instant claim 60, consider the relative length of chain tread means 7 shown in Figure 1 of Summer.

Regarding instant claim 61, note that the apparatus of Summer is self propelled; therefore, it is considered to include a generator of motive power for driving the chain tread means.

Regarding the method steps recited in instant claims 65-66, note that the operation of the structure of Summer is considered to require the method steps as claimed.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 40, 42-43, 45-46, 70, 72-73 and 75-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Summer (US 4,538,722).

Summer is applied above.

Regarding the support members being spaced by a distance of 1m in a transverse direction, as recited in instant claims 40 and 70; the length of the chassis being approximately 1m, as recited in instant claims 42 and 72; the height of the chassis being approximately 1m, as recited in instant claims 43 and 73; the support members being spaced by a distance of approximately 1m in a longitudinal direction, as recited in instant claims 45 and 75; the overall length of the apparatus is approximately 1.7m, as recited in instant claims 46 and 76, it is noted that the instant claimed dimensions are factors related to the size of the apparatus, which are not considered to be patentably significant. As a matter of common sense, it would have been obvious to one skilled in the art to make the apparatus of Summer smaller, which includes the instant claimed size or dimensions, so as to handle a similar rail system of a smaller size.

8. Claims 33, 34, 39, 41, 47, 54-55 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theurer (US 5,435,252) in view of Theurer (US 6,668,728).

Theurer '252 discloses a railway rail handling apparatus having features similar to that recited in the instant claims, including wheel means 5 for support the apparatus for travel, rail moving means 15 or an alternative rail moving means 46 shown in Figure 4 of Theurer, and railway rail raising means 16,17,19 operable to raise a track assembly including a rail above ground. The apparatus of Theurer is capable of performing the operations as recited in the instant claims.

Regarding the wheel means being a ground engaging wheel means, it is noted that ground engaging wheel means are common parts of track working machines. Note for example ground engaging wheel means 12 of Theurer '728. Therefore, it would have been obvious to one skilled in the art to use ground engaging wheel means similar to that taught in Theurer '728 in the structure of Theurer '252 for providing a stable support on ground.

Regarding the instant claimed chassis and support members, as recited in instant claims 39 and 41, consider chassis 2 of Theurer '252 supported at its ends by support members on the wheel means.

Regarding the instant claimed chassis having a platform that defines an aperture for mounting the rail moving means, as recited in instant claim 47, consider Figure 3 of Theurer '252; wherein, rail moving means 15 is suspended from the platform of chassis 2 through an aperture that provide a pivot connection for the upper end of rams 37 of the rail moving means.

Regarding the instant claimed rail moving means being configured to completely encircle a part of the length of a rail, as recited in instant claim 54, consider the rail moving means assembly shown in Figure 4 of Theurer '252.

Regarding the instant claimed gate means recited in instant claim 55, consider gate means 53 shown in Figure 4 of Theurer '252.

9. Claims 62 and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theurer (US 5,435,252) in view of Theurer (US 6,668,728) and Niskin (US 3,836,120).

Theurer '252 and '728 are combined above.

Regarding the raising means including a block and tackle, note that block and tackle devices used for raising loads are well known. Note for example the block and tackle device of Niskin, which comprises a sheave block and tackle with a motor means. In view of Niskin, it would have been obvious to one skilled in the art to alternatively use a well known lifting device, similar to that taught by Niskin, in place of lifting device 19 of Theurer '252 for performing the same expected function and achieving the expected advantages of the well known lifting device.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK T. LE whose telephone number is (571)272-6682. The examiner can normally be reached on Mon-Fri, between 8:15-4:45 (Teleworking).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mark Tuan Le  
Primary Examiner  
Art Unit 3617

/Mark Tuan Le/

11. Primary Examiner, Art Unit 3617